

ADDENDUM

SEVENTY-FIFTH DAY — SATURDAY, MAY 21, 2005

PROCEEDINGS

COMMITTEE SUBSTITUTE HOUSE BILL 2266 ON SECOND READING

(Senator Armbrister in Chair)

The following remarks regarding Floor Amendment No. 5 to **CSHB 2266** were ordered reduced to writing and printed in the *Senate Journal*:

Senator Barrientos: Mr. President and Members, this amendment simply preserves a city's abilities to address patterns of racial segregation through ordinances. As you might know, decisions, enactments and other official policies of our past city councils here in Austin and probably in different parts of Texas, also, have created segregated neighborhoods. And in Austin, I-35 over here has traditionally marked a very real boundary between rich and poor, between races. And, now as property values increase and people of means desire to live close to downtown, we're seeing a new kind of segregation occur, one that is largely economic, for example, but which has obvious, undeniable racial impact. So if a city wants to address that and to forestall another generation of a racial segregation, segregated city, they can adopt inclusionary housing policy that should be able to. So the amendment says that the section does not apply to a city that has segregated communities in census tracts as defined by the United States Census Bureau.

Senator Deuell: Senator Barrientos, I'm not sure we have a printing error again, but this says between lines 28 and 29, and my version only has 21 lines.

Senator Barrientos: The version that I have, Senator, and I was looking at that, I think that you may be looking at another version of your good bill. The Committee Substitute for House Bill 2266 is in the book, and it's the official version. And that says—

Senator Deuell: Well, it's—(inaudible)

Senator Barrientos: Between—

Presiding Officer: Senator, Parliamentarian has reviewed that the amendment is properly drafted.

Senator Deuell: OK, thank you. I think we just have, we have the same wording, just different lines, Mr. President. Senator Barrientos, this is, I think it detracts from my bill. My bill, again, is very simply to prevent municipalities from requiring a builder to sell his product or her product at below market value, but it allows incentives to be developed which would encourage builders to build all levels of housing. So I would, respectfully, ask that we table this amendment.

Presiding Officer: Senator from Travis to close.

Senator Barrientos: Thank you Mr. President. Senator Deuell, I respect the intention of your bill, I agree with it, as a matter of fact. And as I had said, there're a couple of things that we can do to tweak it. That first one, you agreed with, the second one, I pulled down. I could've put it in there, would've been more secure after that, but I pulled that one down. This one, and I'm sure that you know, being a Texan, in different cities of the state, Dallas, Houston, Austin, San Antonio, so many cities, you know that there was segregation going on, either by intent or indifference, neglect, benign neglect in some cases, and that segregation did take place. Now what is happening, Members, in many of our cities, is that there is gentrification going on, that is, the value of the property going up and people wanting to live close to downtown. Some of these ol' boys with a little bit of money go in and start pushing the people who have lived in these segregated neighborhoods out with nothing but money. Now, there is nothing that can be done for some of that, but the intention is to have some of these areas become integrated and, but there's a difference between integration that happens normally, and this will help end gentrification, kick those poor people out, and you know that exists in different parts of Texas, they're called colored towns, or the other side of the track. This would help the cities avoid that now and in the future. And I would hope you would change your mind.

Senator Deuell: Move to table, Mr. President.

COMMITTEE SUBSTITUTE HOUSE BILL 2266 ON THIRD READING

The following remarks regarding final passage of **CSHB 2266** were ordered reduced to writing and printed in the *Senate Journal*:

Senator Deuell: Thank you Mr. President. Before I move for final passage, I do want to say that I share the concerns of Senator Lucio and Senator Shapleigh and Senator Barrientos and Senator Ellis and others. We want to work for affordable housing for all Texans. I understand about segregation. I lived in an integrated neighborhood in the '50s in West Virginia, and moved to Dallas where it was segregated in the '60s. My grandmother always said, we were too poor to hate each other in West Virginia, and it was a culture shock to me to see that segregation, and I've always hated it, and I've always wanted to work to have a society that is truly colorblind. But I believe in the free enterprise system, and I think that the free enterprise system is what gives the greatest hope to low-income and poor people trying to achieve the American dream, and make America and Texas truly that shining city on a hill. And this bill does not inhibit that whatsoever, it merely states that a builder who's trying to build in an area

where low-income housing is needed will not be asked to sell that property for less than its value. If that happens, those builders will stay out of those areas that are so badly needed. So I move final passage of this bill.

HOUSE JOINT RESOLUTION 6 ON SECOND READING

(Senator Averitt in Chair)

The following remarks regarding **HJR 6** were ordered reduced to writing and printed in the *Senate Journal*:

Presiding Officer: The Chair at this time recognizes Senator from Anderson, Senator Staples, on a motion to suspend on **HJR 6**.

Senator Staples: Thank you Mr. President. Members, I would move to suspend the Senate's regular order of business, the Senate's printing rule, 7.12, and the rule requiring that joint resolutions are subject to Senate rules governing bills, Rule 10.01.

Presiding Officer: Senator, will you yield to the Senator from El Paso for a question?

Senator Staples: I yield for a question.

Presiding Officer: Senator from El Paso on a question.

Senator Shapleigh: There was a set of suspensions there, can you go through those, and what rules you're suspending, and for what reasons?

Senator Staples: I'm suspending the Senate's regular order of business in order that we might take up and consider this **HJR 6**. I'm asking for suspension on Rule 7.12, which is the printing rule, the 24-hour layout rule, based on the timestamp date. And then Rule 10.01, which is on page 76 of our rules, if you'd like that referenced, requiring that joint resolutions are subject to Senate rules governing bills. Our state's Constitution does not require a joint resolution, a constitutional amendment, to be read on three several days, only our Senate rules do that. So this would allow for passage, moving adoption would mean passage of the constitutional amendment on second reading.

Senator Shapleigh: Parliamentary inquiry. On 7.12, what is the vote on that rule suspension?

Presiding Officer: Two-thirds.

Senator Shapleigh: OK. Thank you. Senator, can you explain, briefly, what this piece of legislation does?

Senator Staples: Yes, Senator, I'd be glad to. This amendment places into our state's constitution a law that was already passed last session, Senate Bill 7, the Defense of Marriage Act. I believe that it is necessary to place this general law that this Legislature already adopted and is law today into our state's Constitution, because of the challenges to general law that have occurred and is occurring, actually, across the state, across the country in various states. I will also say that I believe that this language does exactly what it has stated that it will do. I don't believe that there're unintended consequences. I believe that an amendment to this bill, the intent and the

net impact would be to kill the legislation. I'm very confident that it does not have any unintended consequences. It has been scrubbed very thoroughly and it simply places into the Constitution what is in law today.

Senator Shapleigh: Now you went over the fact that we have passed legislation here that would effect in general law what you're trying to effect in the Constitution. So if two folks went in, of the same sex, into a county clerk's office, into the courthouse today in Texas, could they get married in Texas today under the existing law?

Senator Staples: Not according to Senate Bill 7.

Senator Shapleigh: OK, but what you want to do is, you now want to put it into the Constitution?

Senator Staples: That's correct.

Senator Shapleigh: Now let me understand the legislation completely. Is there, I know in various iterations of this there's been a ban on civil unions, what does your legislation do?

Senator Staples: I'll read to you the specific language so that there's no miscommunication. On line, on subsection (b) of the legislation, it says, this state or a political subdivision of this state may not create or recognize any legal status identical or similar to marriage. Currently, in law today, I believe that, and I'll find Senate Bill 7 in my packet here, civil unions are prohibited by general law in Senate Bill 7.

Senator Shapleigh: Let's focus on this, if we can, Senator. Your lines 14, 15, and 16 say, this state or a political subdivision may not create or recognize any legal status identical to or similar to marriage. Correct? Am I right on that?

Senator Staples: That's correct.

Senator Shapleigh: OK. So you actually have two pieces, two concepts in **HJR 6** that you're bringing forward. The first is the statement, marriage in this state shall consist only of the union of one man and one woman, and the second, that the state or political subdivision may not create or recognize anything similar to marriage. Right?

Senator Staples: Identical or similar to.

Senator Shapleigh: OK. Let me ask you this question. Why are you bringing this legislation, you personally?

Senator Staples: I'm personally bringing this legislation because I believe that we should protect the institution of marriage as it is defined in law today. That we should hold that up higher than any other relationships. I believe that there's a distinction between intimate association and the right for government to recognize or subsidize any other form of relationship. And I think that is a distinction there. And I think the institution of marriage, as it is defined in law today, should be protected.

Senator Shapleigh: If there're two folks up there that happen to be of the same sex, and they happened to have been married in a state or a country that recognizes marriage, do you feel like their marriage threatens your marriage?

Senator Staples: That's really not what this bill is about, my feelings about threatening. This bill is about placing in the Constitution what we define as marriage, in order to remove it from a state court challenge.

Senator Shapleigh: Do you know, since we're on the Constitution, either the Texas Constitution or the U.S. Constitution, anywhere else in the Bill of Rights of either document where we discriminate against a class of individuals in this country? Where do we do that in the Constitution?

Senator Staples: Well, you know, really, when you think about that, any law that we have is discriminatory to the exclusion of others in one way or another.

Senator Shapleigh: Well, Sir, let me make this more explicit. There was a time in this country when we defined African Americans, constitutionally, as three-fifths of a human being, and that was at that time the prevailing thought about the way slavery was viewed, that a particular class of individuals was held to be less than other individuals, and it was written in the law. And for years, that class of individuals was recognized under the law as less than a full human. So my question to you is, if every other person in this country can enjoy the full fruits and benefits of being a citizen and can go and get married, why would you recognize a particular class of Texans as less than full humans?

Senator Staples: This has nothing to do with recognition of humanity.

Senator Shapleigh: Well I think it does.

Senator Staples: Well do you believe that our—

Senator Shapleigh: You're telling us—

Senator Staples: Do you, do you—

Senator Shapleigh: You're telling us that—

Senator Staples: Let me ask you this—

Senator Shapleigh: If you're saying, just a second, Senator. If you're saying that you and Senator Eltife, Senator Van de Putte, can go out and can achieve intimacy in this society, and have it recognized civilly, we're not talking about religious doctrine here but civil law, and now you're saying for the first time, really, in history, in Constitutional history, we're going to carve out a class of individuals and say to those folks, you cannot share those same benefits. How is it that you think this is going to survive a Constitutional challenge?

Senator Staples: Are you saying that our marriage laws today, and they, as they have been in this state, are not discriminatory?

Senator Shapleigh: I am saying that in the American concept, Constitutional law concept, when we created the Bill of Rights, we granted basic freedoms to all American citizens in this country as to speech, as to right to assemble, and we have never held Constitutional law principles to carve out individuals and say we're going to pit this group against this group in the Constitution. Where else have we done that?

Senator Staples: This law says that any man can get married, and that any woman can get married, it is not affecting those individuals. I, answer my question about the laws that we have today, our marriage laws today, are they discriminatory?

Senator Shapleigh: I think when you have any law that sets up relationships, whether it's granting the right to devise property or all the work we do here on wills in the states, those affect people, but I'm talking about the Constitution. You already have this in general law; why are you putting it into the Texas Constitution?

Senator Staples: I've stated the reason that we're placing it in the Texas Constitution.

Senator Shapleigh: Let me ask you this—

Senator Staples: I mean, polygamy is against the law, it's not even not recognized, it's just against the law, and, in fact, I believe the U.S. Supreme Court has ruled on that issue under the Constitutional law.

Senator Shapleigh: Do you want to put that in the Constitution?

Senator Staples: The United States Supreme Court has taken that up and ruled on it.

Senator Shapleigh: If you believed that that's an—

Senator Staples: And—

Senator Shapleigh: Essential idea that we need to embody as a free people, would you take an amendment to put that in the Constitution?

Senator Staples: I believe that the constitutional language that we have here today sufficiently addresses the issue, and I'm comfortable with it. If you'd like to amend the Constitution, I imagine the Dean would introduce a motion to—

Senator Shapleigh: You're the one, you're the one—

Senator Staples: Introduce a motion to suspend the rules—

Senator Shapleigh: You're the one—

Senator Staples: For you to introduce—

Senator Shapleigh: Putting marriage relationships in the Texas Constitution today. And embodying for the first time a principle of discrimination.

Senator Staples: Absolutely false. This is, that is a false argument, and if you use that argument, you have to say, do you want to repeal the definition of marriage in the laws that we have in the statutes today?

Senator Shapleigh: I don't see a single one in the Constitution. Do you?

Senator Staples: My question was, do you want to do that or not? Because if it's an issue of discrimination, then our definition today is discriminatory.

Senator Shapleigh: Senator, I think what you're doing is something that has not been done, and, in fact, every time this issue has been faced in a court, it has been struck down as unconstitutional, because we have never chosen to pit one group against another in the Constitution. And I'm going to ask you another question. If you do this—

Senator Staples: Before you do that—

Senator Shapleigh: If you do this—

Senator Staples: Before you ask the new question, I want to say, actually, it has been done in other states. Other states have amended their Constitution with a 100 percent passage rate at over, an average of over 70 percent of the vote in favor of it. So to say that it hasn't been done, in fact, it has been done.

Senator Shapleigh: And how many courts have struck it down?

Senator Staples: There's one pending case in a federal court that thwarted the will of over 70 percent of Nebraskans, and in striking it down—

Senator Shapleigh: What provision of the Constitution did they use to strike it down?

Senator Staples: I have a brief on it.

Senator Shapleigh: A provision that says you can't pit—

Senator Staples: I have a brief on it.

Senator Shapleigh: One group against another and treat them differently under the kinds of laws that we pass in this country, it's called the equal protection clause. Now let me ask you this: in what you're trying to do here, if we have same-sex couples that have adopted a child in this state, what is your HJR going to do to their ability to adopt that child or adopt another child in the future?

Senator Staples: Nothing.

Senator Shapleigh: You're telling us that under the language in the second part of this HJR, may not recognize any legal status identical to or similar to marriage.

Senator Staples: That is in current law today.

Senator Shapleigh: And you're saying that will have no effect on the ability to adopt foster kids by same-sex marriages in the State of Texas.

Senator Staples: This is about the definition of marriage, and that's what this bill is about and this Constitutional amendment's about.

Senator Shapleigh: Now let me ask you this, if I am a Fortune 500 company, and I have here in Texas 40,000 employees, and these, a good number of these employees are in same-sex relationships, and they have chosen to take advantage of, say, health insurance or other benefits, and the company has allowed it, what would your bill do to that?

Senator Staples: Nothing.

Senator Shapleigh: You're saying—

Senator Staples: We do not, you know, in your previous example, we don't have same-sex marriage today in Texas, period. So we don't have that arrangement, really, to deal with the issue, the situation that you described. But this does not affect private companies and their decisions in contractual relationships in that regard.

Senator Shapleigh: And you'd be willing to take and make that Constitutional to make sure we're not harming that relationship?

Senator Staples: My language today does not affect that.

Senator Shapleigh: And would you be willing to take language that preserves the ability of any family in Texas to adopt children, no matter what the interpretation is of your bill?

Senator Staples: I think I stated that I'm not going to accept any amendments to this **HJR 6** today. I'm not going to accept any of them. The impact of accepting an amendment to this bill is to kill it. If you want to kill it, try to amend it, that's, but the reality is, the language is what it is, it has been scrubbed, we should let the Members vote on this, it is not a new issue, the language is very clear, and has been worked out, and I'm very confident in what it does. And it does not—

Senator Shapleigh: Senator, do you—

Senator Staples: Affect private contracts.

Senator Shapleigh: Do you have any gay relatives?

Senator Staples: I haven't done a poll, Senator.

Senator Shapleigh: Do you? I mean, nearly every family has a nephew or an uncle or an aunt or a daughter, one in 10 of Texans is gay or lesbian. So my question is, do you have any in your extended family, that you know?

Senator Staples: I, you know, I don't really know.

Senator Shapleigh: Well let me ask you this, do you know Mary Cheney?

Senator Staples: Don't know her.

Senator Shapleigh: If you were, if you did, if you had a nephew who was gay and was going to be of an age where they're going to go get and could get married in another state, as a Senator of the State of Texas, what would you be telling them in their life about this bill?

Senator Staples: I'd be saying, Senator, to vote "Aye" for this on November 2005, for this Constitutional amendment.

Senator Shapleigh: No, let's hear a little bit more of why you'd say that.

Senator Staples: Yeah, I, you know, you and I can get into philosophical debates, and I've got to tell you that there's a part of me that likes to debate and go into issues and discuss various things, but this is a real simple bill that does what this Legislature voted to do last session.

Senator Shapleigh: So your record here of what you would tell your 18-year-old nephew is, go vote forever to ban your ability to have an intimate relationship with another human, in the State of Texas, of your choosing. That would be your choice, that's what you would tell them if you had them right here on the Senate floor with you?

Senator Staples: Senator, I'd tell everyone as I stand here today, that marriage is between one man and one woman. As I said it to you earlier, there's a distinction between intimate association and the right to have government to recognize or subsidize your particular form of relationship. That is very clear and it has nothing to do with one another.

Senator Shapleigh: And—(inaudible, overlapping conversation)

Senator Staples: And those that choose that it, to pretend that it does, is just a mischaracterization.

Senator Shapleigh: You say it's the right of the government to recognize, what you're doing is the right of government to ban in the Constitution. That's what you're doing.

Senator Staples: Is the glass half empty or is the glass half full?

Senator Shapleigh: Well I think you're going to have to ask the people whose glasses you are emptying. My question to you, finally, Senator, is this, how many folks in the State of Texas will be affected by your bill?

Senator Staples: Senator, nothing is banned in this bill. It states what a marriage is and states what a state or political subdivision may not do to create anything identical or similar to marriage, that's what it does.

Senator Shapleigh: Thank you.

Senator Staples: Thank you.

Presiding Officer: Senator, will you yield to the Senator from Hidalgo, Senator Hinojosa, for a question?

Senator Staples: I yield for my good friend, Senator Hinojosa, for a question.

Presiding Officer: Senator Hinojosa.

Senator Hinojosa: Thank you Mr. President. Senator Staples, what I think is that, as you well know, this is a very divisive social issue. Our Constitution is very sacred in terms of the structure for our democracy. Why would you consider putting a divisive social issue in the Constitution?

Senator Staples: Senator, we amend our state Constitution on a routine basis. As I stated—

Senator Hinojosa: Not with social issues.

Senator Staples: I feel that the institution of marriage, as defined between one man and one woman, should be held higher than other forms of relationships that we have. And we know that those who disagree, who, I believe, do not reflect those views, seek to overturn that through whatever mechanism there may be. One—

Senator Hinojosa: What you're actually doing—

Senator Staples: One element is to do that through our state courts, and by placing this in our state Constitution, it removes that challenge at the state level.

Senator Hinojosa: But what you're doing is creating a hostile environment for other Texas citizens by putting this in the Constitution.

Senator Staples: Senator, what we have is already in law today. It does not change what is currently the practice of the State of Texas, and what is, what has been the practice of the State of Texas. It is—

Senator Hinojosa: Senator Staples, let me, let's look at history. You know, we used to discriminate against African Americans because their skin was black, discriminate against Hispanics because his skin was brown, against women because they were the opposite sex, we treated them like property, against Jewish people because they were, because of their religion, and now, against gays because of their sexual orientation.

Senator Staples: Is very, is marriage a violation of civil rights, Senator Hinojosa?

Senator Hinojosa: You disagree with what I'm saying?

Senator Staples: I, I want to respond—

Senator Hinojosa: Well—

Senator Staples: But I want to respond in the right context.

Senator Hinojosa: The Equal Rights Amendment applies—

Senator Staples: No—

Senator Hinojosa: To all people, all citizens, all human beings.

Senator Staples: And any man, and any woman may, may be married under this language. I have an article here titled "America's Rabbi" by Rabbi Aryeh Spero that says, gay marriage is not discrimination. That was one of the groups that you had mentioned who has suffered true discrimination in our state's history. I have, we had witnesses from Black Americans and Hispanic Americans who testified in favor of **HJR 6**, individuals who have truly suffered civil rights discriminations that we must work to overcome in this country and in this state, and I think you and I share that goal. This is not a discriminatory issue in any way.

Senator Hinojosa: Well I feel that sometimes even people who are discriminated against are somewhat misguided and wrong on their positions. But let me ask you another question. Do you think being gay is a learned behavior, or are you born with those type of genes?

Senator Staples: That is a great debate for psychologists to discuss. And I would hope that our medical profession would continue to explore that in order to arrive at an issue of reasonable understanding that people could agree on. And that's really not what this amendment is about.

Senator Hinojosa: Well, it is about that. All credible research shows that this is not learned behavior, like, just like when you're born black or brown. And to me, we're singling out a class of people for whatever, well, for political reasons, in my opinion. If we are to protect, if your goal is to protect the institution of marriage, would you accept an amendment that says, three strikes you're out, or you can only be married and divorced three times?

Senator Staples: (Laughter) I stated that I'm not going to accept any amendments because I truly believe any amendments to this bill is nothing more than an attempt to defeat the legislation.

Senator Hinojosa: I disagree.

Senator Staples: And I disagree with, I mean, I respectfully disagree that there are different studies out there that have different conclusions about the issue.

Senator Hinojosa: You know, Senator Staples, it seems to me that your mind is made up, and you don't want to be confused with the facts.

Senator Staples: Well I—

Senator Hinojosa: Thank you.

Senator Staples: Senator, I respect your position. I have studied the facts. I'm very confident that this is the right thing to do, and that's why I brought it forward.

Presiding Officer: Senator, will you yield to Senator from Bexar, Senator Van de Putte, for a question?

Senator Staples: I yield for a question.

Presiding Officer: Senator Van de Putte for a question.

Senator Van de Putte: Thank you Mr. President. And thank you, Senator Staples. I know that the Committee heard hours and hours of testimony, and I can tell you that each of the Senators, as you know, has received E-mails and letters, phone calls, and correspondence, both for and against this measure. As I looked at it, Senator, I wanted to ask you, many people have called and have said that placing this prohibition in the Constitution would strengthen the institution and the sanctity of marriage. Is that one of the things that has brought you to bring this forth?

Senator Staples: Well, you know, it was really interesting listening to the debate in Committee on this issue. There are so many different people, very sincere, and I want to compliment both the proponents and opponents of the legislation for the most part. Everyone conducted themselves in a very responsible manner, and I think it reflects well on all of us as Texans. I think each brought a unique perspective to this particular issue. Some feel very strongly that that's the reason. Others feel very strongly that it's not. I think there's a little something in everyone's position. But again, my rationale is, placing it in the Constitution removes existing law that we have in our state today from state court challenges.

Senator Van de Putte: Well, Senator Staples, as I looked at the issue of putting it in the Constitution, and, normally, we look at the Constitution to protect people's rights, not, kind of, take them away from a group of folks. The sticky part about this is, if the institution of marriage had no act of sex, we wouldn't even be talking about it. Because what's uncomfortable here, and what people are really nervous, concerned, have anxiety about, is what two people do, man and a woman, two men, two women, below their belly buttons. If the marriage of, I mean if the marriage was just a relationship where no sex occurred, then we probably wouldn't be having this discussion. But what the uncomfortable part is is what happens between two people when they are in a loving, committed relationship, and they extend that to, hopefully, a lifelong commitment of marriage. I have a constituent who sent me something trying to convince me that I really needed to vote for this. And she sent me something from the *Journal of Health and Social Behavior*, and it said, basically, that I should vote for

this because marriage between a man and a woman makes people healthier and it strengthens our society. But in this study that she sent me, she said that psychologists have discovered several factors. And she said one of it is that single men do stupid things, and I'm quoting: they drink too much, they take drugs, they get into fights, drive when drunk, and take unnecessary risks. When they marry they do fewer stupid things. Women benefit less from this effect of marriage because single women do fewer single, do fewer stupid things than single men do. And, so she wanted me to vote for this to help single men do fewer stupid things. Now—

Senator Staples: We, I'll just say that men need all the help we can get, we're usually outmaneuvered and outclassed, so we—

Senator Van de Putte: Well—

Senator Staples: We do appreciate all—

Senator Van de Putte: And I looked—

Senator Staples: The help we can get.

Senator Van de Putte: At this and I thought, well, I hadn't thought about that. But having three young adult sons and teenagers, maybe I ought to consider it. But what my worry is, and I know that you bring the best intentions, is that we have held our Constitution, our U.S. Constitution and the state Constitution, as a place that gives rights to people and doesn't take them away.

Presiding Officer: Senator, will you yield to the Senator from Harris, Senator Ellis, for a question?

Senator Staples: I yield for a question.

Presiding Officer: Senator Ellis, for a question.

Senator Ellis: Thank you Mr. President. Senator Staples, I think I heard you say you will not accept any amendments, and I think I heard you say your rationale for not accepting any amendments is that it would kill the bill. And I'd like for you to elaborate on why it would kill the bill.

Senator Staples: Senator, you and I both know that any delays at this point of the session result in a greater chance of nonpassage of a piece of legislation. And there, I'm sure there are other reasons I would not take amendments, but I really don't have to look very hard beyond that one.

Senator Ellis: How long, Senator, ago did this bill pass the House and show up in this Chamber?

Senator Staples: I didn't check on it, Senator.

Senator Ellis: From my calculation, it sat in the Senate State Affairs Committee for 20 days, roughly 20 days without a sponsor, and I assume that's because deep down inside you know that you didn't want to carry this, or were you distracted? I'm just saying, for it to have sat there 20 days without a sponsor in the Senate indicated to me that there was not a mad rush to be the lead author on this bill, is that a fair assessment?

Senator Staples: No, that's not a fair assessment. Have you looked at my, the bills that I've authored and sponsored this session, Senator Ellis?

Senator Ellis: I have. And—

Senator Staples: Do you know how many that I've carried?

Senator Ellis: How many have you carried?

Senator Staples: Too many.

Senator Ellis: Yeah. Well this is one too many (laughter), maybe you ought to work on those others and let this one alone. Senator, here's the point I'm making. You're asking us to suspend how many rules? Without giving it a number, just roughly, you want us to get rid of the 24-hour posting rule? What other rules are you asking? I'll go to the merits of my concerns, but, first, just in terms of process for this body, how, just roughly, how many rules are you asking?

Senator Staples: We, we suspend them—

Senator Ellis: I think it's in your script there.

Senator Staples: We suspend rules every day, and I'm, you heard the two rules that are normally not made but that are often made—

Senator Ellis: So that's the posting—

Senator Staples: In any late part—

Senator Ellis: The posting, the 24-hour—

Senator Staples: Of the session.

Senator Ellis: Posting, and what was the other one?

Senator Staples: The 10.01, in regard to the Senate Rule requirement about a Constitutional amendment being read on three several days, that is not in our state's Constitution.

Senator Ellis: Well I'm, and I raise this because I don't want, I want the Members to make sure that they think about what you're asking this body to do. A bill that passed the House a very long time ago. And I'd tell you another little secret, if it hadn't been noticed, it had, it hadn't, it's not as though we've been so busy over here, I mean, I'm still waiting to see a school finance bill come back, the big tax bill come back, the budget come back. But, so, you, this bill sat there for 20 days without a request for a hearing, and then when a request was made for a hearing it was late on a Friday or on a Saturday, posted Saturday afternoon, which means that most people who wanted to testify against it, or for it, found out sometime Sunday night. One of the more prominent advocates on your side of this issue told me he drove six hours, I believe, at least four hours to come in and question me about why I tagged it, and I told him I found out about it at 4:00 on Sunday, and he said, I did, too. I said, well I'm in the Senate, I guess I'm supposed to sit up and read the Internet all day Saturday. But, seriously, Todd, here's the issue. You are going to reject any amendments and that's going to have sway on some people, you're not going to say, let the Senate vote as well. You're going to put your colleagues, who may have to do something to keep the right a little happy, and you're going to say to them, I'm going to oppose this

amendment, even without a discussion on the merits of it. I'm going to oppose this amendment because it could possibly be a procedural tactic to kill this bill, when you sat on this bill for 20 days and didn't ask for a hearing, and then decided you wanted a hearing in the dark of night, so that folks would have to rearrange their schedules, come in here, and decide that they want to testify on a Monday morning. And, Senator—

Senator Staples: Senator Ellis, that is a total mischaracterization of the process—

Senator Ellis: Oh, is it?

Senator Staples: Of the process. And if you want to editorialize, that's fine. But you and I both know that we suspend rules in this Chamber every day to suspend the state's Constitution, we do it on just about every bill, except for one Member.

Senator Ellis: Ha—

Senator Staples: And at this point of the session, they do it.

Senator Ellis: OK.

Senator Staples: And you and I both know that at the end of the session there are many different bills.

Senator Ellis: OK.

Senator Staples: The bill that I passed today sat in our Committee for quite some time. If you want to go through and find a list of how long bills have sat, how long bills have sat before people picked them up, if you want to discuss other Members contemplating, maybe they want to pick bills up, I think those are all fair things to say. But I think to say, in the dark of night and try to characterize this as an issue that, that is, is one that is trying to be, as you had stated, is just not a fair assessment. But we're all entitled to our—

Senator Ellis: On procedure—

Senator Staples: Opinion, and I, and—

Senator Ellis: And this will be my last point.

Senator Staples: And I'm wanting to do that.

Senator Ellis: I have carried a number of controversial bills over the years that you and I have been together, one bill in particular before you got here, maybe before you got in the House, the hate crimes bill. Would you have thought that it would have been reasonable on my part if that hate crimes bill had come out of the House, for me to wait 20 days and then come up at the end of the session and then get the bill out of Committee, set the bill on a Saturday evening, have the hearing on a Monday morning, knowing there'd be a lot of emotion on both sides of the issue, and then, when the bill, when I decided to bring the bill on the floor of the Senate, ask to suspend the 24-hour posting rule? I mean, would you, just think about it, you don't even have to respond if you don't want to, would you not be standing up on procedure, first of all, asking why would I wait until the last minute to bring the bill up?

Senator Staples: Senator—

Senator Ellis: When it's so controversial, I'm not talking about—

Senator Staples: OK, I want to—

Senator Ellis: Some—

Senator Staples: I want to answer—

Senator Ellis: Municipal utility district.

Senator Staples: I want to answer you, I want to answer you. In fact, you brought up the hate crimes bill when I was not on the floor of the Senate. Well, in fact, that—

Senator Ellis: (Inaudible, overlapping conversation) If I didn't—

Senator Staples: Let me, let me finish, let me—

Senator Ellis: OK.

Senator Staples: Finish. You did that. You brought it up on the floor of the Senate when I was not here. But I couldn't be here, I had a death in the family. I could've exercised Senatorial privileges as Governor Ratliff allowed us to do that session, and say, wait on that bill till I get back because it is important, and important to me, to my constituents. But I know it is a part of the process. As a courtesy to you and the other Members, I didn't try to exercise that privilege because I couldn't be here, I had to be with my family because of a death.

Senator Ellis: Well my, my—

Senator Staples: And in memory—

Senator Ellis: My, my—

Senator Staples: And my memory of—

Senator Ellis: (Inaudible, overlapping conversation)

Senator Staples: Major characterization—

Senator Ellis: Yeah. I may need—

Senator Staples: That I, I just think—

Senator Ellis: My memory refreshed.

Senator Staples: I just think it has no real bearing on this issue—

Senator Ellis: Yeah.

Senator Staples: Or this process.

Senator Ellis: Yeah.

Senator Staples: And that we want to use it when it works for us—

Senator Ellis: Yeah.

Senator Staples: But we don't want to when it doesn't, but—

Senator Ellis: Yeah. As I recall on the hate crimes bill, the Governor of the State of Texas, when he saw that I had the votes to get that bill out, intervened because he took the position that that bill was so important that every Member of the Senate had to be here. And it pulled off some votes that I had on that bill. So, now, I don't know on this date you're talking about—

Senator Staples: I—

Senator Ellis: Where you were.

Senator Staples: I remember.

Senator Ellis: But I clearly remember, and it might have been some Members who were glad they were gone, because they knew I was right, and the time was right, but the politics, they thought, and their district hadn't caught up with it, but so much for the procedure. But I just wanted to raise that because I don't think that's fair, to be honest with you. And that's, it's not a, a personal attack on you, but to be honest with you, something as important as this, amending the Texas Constitution on an issue like this, as a number of Members have said, we'll be limiting somebody's rights. I mean, look, Todd, unlike a lot, probably most other southern states, even during the worst of times in Texas, when on this floor some very low-down, dirty things were done by our predecessors in these seats, at least they had the good sense to never write that bigotry into the Texas Constitution. And it's something, I think, we ought to be very serious and contemplative about before we do it. And in some of our sister states that did write that kind of trash in their Constitutions, they have holy H getting it out. In Alabama, as an example, they have gone to the voters on several occasions to get things out of their Constitution that they'd like to forget that they ever did in Alabama. We did them, too, but at least we just did it by tradition, or we put it in state statute, but we didn't write it in our Constitution. And they go back to the voters, even now, with stuff the federal courts have struck down in the Alabama Constitution, and they can't get it out. You know the last time, Senator, that the Texas Constitution was amended?

Senator Staples: Two years ago.

Senator Ellis: I think, from my research going through these amendments there, I think it might've been that, unless they're not in order, the one right ahead of yours would've been 31, I believe, you being 32.

Senator Staples: You're saying this session, or the last time the Constitution was amended and the voters voted on it?

Senator Ellis: Well this bill, of the preamble part of it, I think the last time we went in and put something in there, might've been 1997. It might've been the Victims' Compensation Fund. I'm not sure who, who carried it or not, but I think it was the last time this—

Senator Staples: Well I mean—

Senator Ellis: Section of the Constitution—

Senator Staples: Oh, this section.

Senator Ellis: Yeah.

Senator Staples: I see.

Senator Ellis: Was amended.

Senator Staples: Yeah.

Senator Ellis: What makes you so sure that the language you have would not prohibit people who happen to be of opposite sex, of the same sex, and are in a loving, committed relationship, will not lose their health care benefits, thereby put the State of Texas in a position well it, where it will have to pick up the health fair, health care benefits for one of those individuals?

Senator Staples: This does not affect private contracts. And I very firmly believe that. Now let me say that this is not, Texas is not Alabama. This is not discrimination. This is protecting what the definition of marriage is in the Constitution, it does protect that definition. And I can't imagine a day where we will not stand up and say, we're glad we protected the definition of marriage as between one man and one woman.

Senator Ellis: Senator, I'm told that there are health care providers that are denying benefits to the partner of someone who works at a company and has health care benefits, because of the DOMA Act, the ban on, on gay marriages that we already have in place. Have you heard that?

Senator Staples: I think I heard—

Senator Ellis: Have you heard that?

Senator Staples: Testimony to that effect from someone who, a nonrepresentative of the company, it was an individual, they didn't quote a lot of facts about the details. But there're a lot of claims that are false and mischaracterization of what this amendment does and what the bill that we passed last session did.

Senator Ellis: I, I—

Senator Staples: And—

Senator Ellis: I'm told, and this came out at Committee the other night, that health insurance companies, such as Humana, have cited the Defense of Marriage Act in Texas of 2003 as a reason for discontinuing domestic partner policies. And I know that Senator Wentworth, the author of that bill, stated that that was not his intent, but that came up during Committee. Have you, Sir, contacted Humana to ask whether or not that is the case?

Senator Staples: I have not. I do not believe that it affects private contracts.

Senator Ellis: Well—

Senator Staples: Have you—

Senator Ellis: Here—

Senator Staples: Have you contacted Humana—

Senator Ellis: I, I—

Senator Staples: To verify that?

Senator Ellis: I have, and I have not gotten an answer.

Senator Staples: OK.

Senator Ellis: But here's what I'm saying. I'm not trying to amend the Constitution, Senator. What I'm telling you is, you worked in, you're moving mighty swiftly when you're treading on somebody else's turf, and not yours. It's not going to impact your family. But to take the position you, what would be so wrong with taking an amendment to your Constitutional amendment, not my Constitutional amendment, your Constitutional amendment, to make sure it is clear that the intent of Senator Wentworth, when he passed that Act in 2003, and your intent with this language you're trying to put in the Texas Constitution, does not impact domestic partner benefits? We've got the largest number of uninsured people in the country. And what would be so wrong with putting in language as innocuous, even if you want to go in and add, say, two or three times, people of the same sex can't get married, if you want to add language saying they've got to wear a little yellow badge if they're even dating, what would be so dastardly about language that says, this is not intended to impact somebody's private contractual relationship in terms of domestic partner benefits? I mean, what would it hurt?

Senator Staples: Senator, Senator, can you cite me one case, even one case where it's been argued that DOMA is a restriction on benefits?

Senator Ellis: Yeah, the person that testified before—

Senator Staples: Can you—

Senator Ellis: This Committee.

Senator Staples: Find me a case where that's been legally argued?

Senator Ellis: The person that came—

Senator Staples: No, no, they—

Senator Ellis: Before the—

Senator Staples: They made—

Senator Ellis: No. You know, no, I'm going to put—

Senator Staples: I'm wanting it, my, my—

Senator Ellis: But you know—

Senator Staples: Question is, not what a company's policy is—

Senator Ellis: Yeah.

Senator Staples: My question is, cite me a case—

Senator Ellis: Yeah.

Senator Staples: Where it's been legally argued that that is a restriction?

Senator Ellis: Senator, I'm not trying to amend the Constitution.

Senator Staples: I—

Senator Ellis: Cite, cite me a good public policy rationale for not including language in your amendment. You have the votes to get it out of the Senate. You had the votes to get it out of the House. It got out of the House a month ago. What would kill it?

You can do it today. I'm not going to filibuster this bill. Even, even with my hot air, I can't talk for 11 days. But I'm saying, I'm saying, what would be so, why run the risk, Senator Staples, of somebody who has a domestic partner, and then when they die, if they worked out a contractual arrangement to say that that person would inherit their half of whatever they accumulated during the period of time that they were in this relationship. If they were opposite sex, if they were of opposite sexes, then it would be what some people would call shacking up, and they wouldn't have to pay federal taxes on it—

Senator Staples: There're—

Senator Ellis: But this way, they would.

Senator Staples: There're bets—

Senator Ellis: I mean, what would be wrong with that?

Senator Staples: There're bets you might could go for 10 days, maybe not 11, but—

Senator Ellis: Well I—

Senator Staples: But they may have—

Senator Ellis: But you know what?

Senator Staples: May have money on it.

Senator Ellis: No matter how long I went, I can count. You, and you got more votes today than you had yesterday as best—

Senator Staples: You—

Senator Ellis: I can tell. So look—

Senator Staples: It's a good—

Senator Ellis: Seeing my—

Senator Staples: It's a good—

Senator Ellis: Persuasion, I obviously haven't persuaded too many. (Laughter)

Senator Staples: I think because Texans understand what's taking place, that this does not impact private contracts, that is very clear. And they want—

Senator Ellis: No—

Senator Staples: Want to see this move forward.

Senator Ellis: Senator, you also stated that you thought that this ought to be enshrined in the Texas Constitution because it is the law. We passed this law two years ago. I think I heard that, something pretty much to that effect, is that right?

Senator Staples: Say, I mean, say what you want to say.

Senator Ellis: If I was trying to write that hate crime statute off in the Constitution, would you be for that?

Senator Staples: I think the way you had the hate crimes bill structured last time could've been worded a lot better.

Senator Ellis: Which part bothered you?

Senator Staples: And I, you know, it's been four years ago. And I don't remember the exact language, but I knew I had difficulty with it.

Senator Ellis: Well I'm not sure if it, if this is the part that bothered you, but it's interesting. The dominant issue then—

Senator Staples: Um-hum.

Senator Ellis: Was sexual orientation. We can dance around, we can tiptoe, but if that language had said, we're going to enhance the penalty because of somebody's race or religion, that bill would've slipped out of here in a New York minute. But the issue then was sexual orientation. And I'll make you a wager, Senator, in the not too distant future, I don't know when, society will have made a shift. And at some point, somebody's going to be on the floor of this Senate and saying that in the year 2005, when they had all these important public policy issues in Texas to focus on, they stopped and put a good bit of their time into worrying about what went on in the privacy of somebody's home. And there'll be some folks in the gallery in bewilderment and laughing and saying, surely, nobody was out there arguing that somehow it would make their marriage, make my marriage feel somewhat demeaned, my relationship between me and my wife, because somebody else had a relationship between two women or two men. At some points this AIDS, endemic in Texas, by the way, that many people like to associate with a certain lifestyle, at some point when we're serious about focusing on what to do with that problem, somebody's going to say, you mean they were trying to keep people from being in a committed relationship between a woman and a woman, or a man and a man, just as we encourage that relationship between a man and a woman? And somehow they thought that that was going to cut down, you know, those people having multiple relationships when they're in the same sex would be better than having one relationship? And they'll be sitting in the gallery laughing, and then it'll be a virtually unanimous vote the other way. Might be somebody out of your district instead of mine, by the way. And they'll get up and say, we've got to get this out of the Constitution. And then when they put it on the ballot to take it to the voters, they'll spend as long as the people in Alabama are spending trying to get the very same trash out of their Constitution that you, Sir, are about to add to ours.

Senator Staples: Senator, Texans of all different colors have stated, this is not about discrimination. And I will predict that a time will not come when a future generation will regret that this Legislature took the time to protect the marriage between one man and one woman.

Senator Ellis: Senator, I, I'll close by telling you this. People used the Bible, of all documents, to justify slavery. People have used all sorts of evil, strange arguments to do some of the most ridiculous and inhumane things to one another. The test of leadership is to be calm, and to decide when you cast a vote, don't do it based on who you make happy for the moment, but whether or not, in your heart of hearts, you think that it is the right thing to do. Now in a few moments, some others will have their say, but Members are going to make a decision on whether or not this bill, first of all, is so important we ought to suspend even the 24-hour posting rule on something everybody knew was going to come up all session. And this could've come up a long time ago.

And, then they're going to make a judgment call, well let's rush it and get it out of here. The votes are there, but we don't even want to clean this thing up because we don't want to run the risk of somebody on the other side saying, you know, you're right. Your amendment's in worse shape now than it was when it came out of House Committee. At least they had the good judgment in Committee to try to clean the thing up. And then it went on the floor and they dirtied it up again. And then this body is going to just roll through all those rules to get this out of here, although it sat here all this time. The test of leadership, first of all, is, does that make sense? And if Members are going to vote for it, I'm hoping they'll at least be open-minded enough to put these amendments on so that, at least, even if politically you have to do it. Look, I understand that, I'm not trying to play holier-than-thou, you know, be a, it's a very tough person who'll decide to stand up and see that train of history going in one direction, and it's the wrong direction, and decide that they're going to say, I'm not going to be a part of that. But the very least that Members ought to do is take these amendments to clean this document up. At least keep this bad amendment from being a horrible one. Thank you.

Presiding Officer: Senator, will you yield to the Senator from Travis for a question?

Senator Staples: I yield for a question.

Presiding Officer: Senator Barrientos.

Senator Barrientos: Mr. President, a parliamentary inquiry.

Presiding Officer: State your inquiry.

Senator Barrientos: Mr. President, how much time is the Senate allowed to spend on this HJR 6?

Presiding Officer: I'm not sure if the Chair understands the question. If you're asking is—

Senator Barrientos: How—

Presiding Officer: This a debatable motion, it is not a debatable motion. But it, there is no time limit on level of debate, or time—

Senator Barrientos: Well let me put it—

Presiding Officer: Of debate on—

Senator Barrientos: Another way.

Presiding Officer: Any issue that is debatable.

Senator Barrientos: If I can ask this, how much time could the Senate waste on this item while we've got school finance, schoolchildren, teachers, and the budget to deal with? How much, if no one protested or called a point of order, how much time could we use on this?

Presiding Officer: On the adoption, as I stated before, the motion to suspend the various rules that Senator Staples had stated in his opening remarks, that is a nondebatable motion, but as tradition, by courtesy, it is done. If someone were to call

a point of order against further discussion on his motion then we would take the vote. If the rules were suspended, then there is no time limit on the adoption of the resolution.

Senator Barrientos: So, in short, if no one objected, we could spend five, 10, 12 hours on this, possibly.

Presiding Officer: You're only—

Senator Barrientos: Couldn't we, under our Senate Rules?

Presiding Officer: Under our Senate Rules you would be only limited by May 31st.

Senator Barrientos: And conscience. Parliamentary inquiry, Mr. President.

Presiding Officer: State your inquiry.

Senator Barrientos: Mr. President, on the several items of suspension of the Constitutional Rules or Senate Rules, printing, three several days, et cetera, two-thirds or four-fifths, which would apply to which, and would that be Members of the Senate or Members present?

Presiding Officer: Two-thirds would apply to each of the motions that, or to the motion that Senator Staples made concerning the suspension of each of the Senate Rules. And it would be two-thirds of the Members present and voting.

Senator Barrientos: What about the Constitutional Rule, do we have to deal with that one, three several days?

Presiding Officer: It, the Constitutional Rule is, it is not a Constitutional Rule, doesn't apply on resolutions by Rule 7, 10.01, that is a Senate Rule on the three days.

Senator Barrientos: So the Constitutional Rule on three days would not apply on this subject today?

Presiding Officer: Constitutional Rules only apply to bills, not to resolutions or amendments, resolutions that are amending the Constitution.

Senator Barrientos: So, long story short, Mr. President, we're talking about two-thirds for suspension, of Members present.

Presiding Officer: Members present and voting.

Senator Barrientos: Thank you Mr. President.

Presiding Officer: You're welcome, Sir. Senator, will you yield to the, excuse me first, Senator, was that all that you had as far as, OK. Senator, will you yield now to the Senator from Harris, Senator Whitmire, for a question?

Senator Staples: I yield for a question from Dean Whitmire.

Senator Whitmire: Thank you. I almost didn't speak or raise questions, kind of out of respect for Senator Ellis and Shapleigh and Hinojosa and Van de Putte that I think have done an outstanding job of raising relevant issues as it relates to consideration. But I don't know if you have any gay or lesbian friends that you've gotten to know them personally, their lifestyle. I've been very fortunate to have done so, and currently do. I can think of several couples that are as madly in love and respect each other as any heterosexual couple that you can name. So I feel compelled to stand, publicly, and

represent their views and let you know that, generally speaking, Senator Staples, they just want to be left alone. They're taxpayers, law-abiding citizens, mind their own business. I even know one, Sue Lovell would probably, might not even mind me mentioning her name. They've adopted some children, providing a very safe and protective home for a couple of children that no one else cared about. I just want you to know the consequences of what you're about to do. And I don't think my line of questioning, or the others, will change anyone's mind. As I mentioned last night, we were talking about red lights, generally speaking, people come to the Senate Floor with their minds made up. In the House, you can sometimes swing 20 or 30 votes in a speech, but in this deliberative body, generally speaking, people come, and their minds are made up. But I do want to ask you a couple of questions and give everyone at least an opportunity to search their conscience and represent their district with all due consideration. I guess what bothers me the most is, and I would ask you this question, what are you really trying to fix? Why are you taking our time on this last week of the session with something that no one introduced over here, that I, just, for the life of me, I guess I want to ask you, and you're such a good person, and I don't question your motives, but why are you doing this? What, why are you, what are you trying to fix?

Senator Staples: You know, that argument has been made about why are you doing this, why, you know, how much time is this going to take? You know, the reality is, this wouldn't take such time at all if we'd just vote it up and down. An, and, and, and I want to finish, I want to finish, it really, it really wouldn't. And we, and we talk about what are we trying to fix? Why are we delaying? We all know that we have issues that we're for and we have issues that we're against, and when we are against them, we'll use arguments that might sound good in a news clip, or we may advocate our position. And that's fair, I think that's real fair. We all do that, and some are, some of us are better than others at that, and you're one, you're among the best, so, you know, I want to make a distinction between why I'm for this bill versus those other arguments, and, I think, that, that are thrown out there, because I think that's—

Senator Whitmire: But, Senator Staples—

Senator Staples: That's, I think that really doesn't—

Senator Whitmire: We, we—

Senator Staples: Fit when we talk, we could, we could say that about every issue. Why're you doing this, you know—

Senator Whitmire: Well we, I'm willing to—

Senator Staples: What's the need—

Senator Whitmire: I'm willing to—

Senator Staples: To have this discussion?

Senator Whitmire: For instance—

Senator Staples: But we do it—

Senator Whitmire: Why, why—(inaudible, overlapping conversation)

Senator Staples: And we usually do it while we're opposed to it or when we're not.

Senator Whitmire: You know, why we're dealing with children, protective service?

Senator Staples: And, so we just need to be honest, I think, intellectually honest—

Senator Whitmire: Sure.

Senator Staples: About making those kind of arguments. And, I think, we need to do that, and so—

Senator Whitmire: The reason—

Senator Staples: What I want to do, and why I propose this, is because I think that we need, we have it in general law today. We know—

Senator Whitmire: It's against the law, I, I—

Senator Staples: We know that people want to challenge that. If we place it in the Constitution, that protection is afforded. And that's why I brought it forward, and if it concerns people that there are other issues that we need to get to, maybe they shouldn't have brought up billboard bills on a transportation amendment, maybe they shouldn't have brought up other issues, maybe, that are not germane on a transportation bill, I don't know. Everybody has to make their own decisions why they make amendments and why they move forward.

Senator Whitmire: I mean, I could go through other topics. You know, we're dealing with children's protective service because that system was broken. And children are being abused and they're not being protected and that's stalled out in a conference committee. We all need to be over in the Finance Committee right now trying to reach a conclusion to that package.

Senator Staples: Workers' compensation—

Senator Whitmire: School finance, school finance—

Senator Staples: Work—

Senator Whitmire: Your workman's—

Senator Staples: Work—

Senator Whitmire: Comp that—

Senator Staples: Workers' comp—(inaudible, overlapping conversation)

Senator Whitmire: You worked so hard on.

Senator Staples: That sat over there—

Senator Whitmire: That ain't—(inaudible, overlapping conversation)

Senator Staples: A good while, Senator—(inaudible)

Senator Whitmire: So I could go on and give you a, a litany of real issues and problems that we get letters about.

Senator Staples: Well is it—

Senator Whitmire: (Inaudible)

Senator Staples: Not real—

Senator Whitmire: And it's a broken—

Senator Staples: Because you disagree with it?

Senator Whitmire: This ain't broken.

Senator Staples: Let me ask you that, is it—

Senator Whitmire: Nobody's getting the same sex—

Senator Staples: Is it not real—

Senator Whitmire: Marriage deal.

Senator Staples: Is it not real, just because you disagree with it, Senator Whitmire?

Senator Whitmire: No, no.

Senator Staples: I mean—

Senator Whitmire: No.

Senator Staples: It's (inaudible) not, everybody—

Senator Whitmire: (Inaudible, overlapping conversation)

Senator Staples: Have real issues.

Senator Whitmire: But I guess I'm looking at the perspective of what the people of Texas are contacting us about and expecting us to resolve. And I guess we came into session with school finance at the highest priority, a tax system to support it, the children protective service, workmen's comp, your transportation bill, I could go on and on. I could talk about, for the rest of the day, issues in Criminal Justice Committee that needs addressing. But we're not getting to them because you're piling on a group of citizens who just want to be left alone.

Senator Staples: We're not getting to them because—

Senator Whitmire: And to not—(inaudible, overlapping conversation)

Senator Staples: Your opposition to it rather than voting and moving on with those other issues, that's the reason why we're not to those other issues. That's the very clear reason we're not to those other issues. In fact, when there are 60 lawsuits around the country, that's kind of a real issue. When—

Senator Whitmire: Around the country.

Senator Staples: When we move this to our Constitution, we'll be eliminating lawsuits which would detract resources from other real issues. So, I think, we could argue those kind of merits, but I think they really don't go that far when you look at what's happening.

Senator Whitmire: Let me close, because I know I'm not changing your mind, but I am doing my best to allow you to see the views of people who are living very productive lives, want to be left alone, and I don't think they're posing a threat to you, me, or any other Texan. Let me ask you this, how many amendments are there in the Texas Constitution? About? I used to know but we add them so fast—

Senator Staples: No—

Senator Whitmire: It's hard to keep a—

Senator Staples: We, we—

Senator Whitmire: Close to 300?

Senator Staples: Do about 20 to 25 every session, it seems like.

Senator Whitmire: Do you really think, I mean, you're fixing to put some, some Constitutional prohibition against a practice or a lifestyle. But other than—

Senator Staples: Senator—

Senator Whitmire: Other than that—

Senator Staples: That's not right.

Senator Whitmire: Who, who do you think—

Senator Staples: That's, that's—

Senator Whitmire: Who's going to know—

Senator Staples: That's incorrect—

Senator Whitmire: This is in the Constitution?

Senator Staples: That's, that's not what it's doing. And that is, that is a mischaracterization—

Senator Whitmire: Well it is.

Senator Staples: Of the language.

Senator Whitmire: It, it is.

Senator Staples: And there is a distinction between—

Senator Whitmire: The only good you're—

Senator Staples: Intimate association—

Senator Whitmire: The only good news—

Senator Staples: (Inaudible, overlapping conversation)

Senator Whitmire: And we know—

Senator Staples: That that is. Because if it wasn't we wouldn't outlaw polygamy, we, we wouldn't outlaw marriage as being between family members. We wouldn't—

Senator Whitmire: (Inaudible, overlapping conversation)

Senator Staples: Children could marry. This society makes those distinctions.

Senator Whitmire: I know.

Senator Staples: And making those distinctions is separate and apart from unconstitutional—

Senator Whitmire: Yeah.

Senator Staples: (Inaudible)

Senator Whitmire: And we're being redundant. All I will say in closing, would you not agree with me, based on what little teaching of the Texas Constitution you get in our public schools. The fact that I stand here, and we're one of 31, and I do not have

an accurate count right now how many Constitutional amendments are on the state Constitution. I would've known a few years ago, it's somewhere around 300. Would you not agree with me? The net result is no one's even going to know this is in the Constitution. It's not going to be taught in our schools. You probably put it in your newsletter, maybe, I don't know, other than, other than a brief mention of this debate, it becomes the Constitutional amendment to the state Constitution. It's just going to sit there with that, you can't have pliers because somebody was going to cut barbed wire at one time. And I could go on and on and on. It'll be one of the others that no one knows anything about. But the sad thing about it is, you're piling on a group of folks who just want to be left alone. Wouldn't you not agree with me? That no one's going to know it's in the Constitution when we get through here. So I don't know what you're hoping to accomplish.

Senator Staples: Senator Whitmire, I disagree, but I agree to this, that you are a very effective advocate, you're a very good friend, and you're a very fine Senator.

Senator Whitmire: I ought to just close on that note. (Laughter) I respect you as a Senator, and you have a right to represent the views which you're doing today. But I think it is a huge mistake to put something in the Constitution that is unnecessary that, quite frankly, affects people that are not a harm to anyone, they just want to be left alone by government and go forward in their lives, and we're not allowing them to do that with this Constitutional amendment. Thank you for your time.

Senator Staples: Thank you Senator Whitmire.

Presiding Officer: Senator, will you yield to the Senator from Cameron for a question?

Senator Staples: I yield for a question, yes.

Presiding Officer: Senator from Cameron for a question.

Senator Lucio: Thank you Mr. President. Members, I want to acknowledge the fact that I spoke to Senator Hinojosa earlier this morning. After a couple of days and checking back, by the way, I was one of those that signed on to a list, not wanting to bring this issue up, period. He very graciously accepted the fact that I wanted my name pulled off that list. I told him that my religious and moral beliefs, and in communicating this issue, Senator Staples, with my religious leaders and many people in my district back home over the last couple of days had brought me to this decision. I'm disappointed, Senator Staples, in one thing here in this debate; I'm so proud of Senator Ellis for the position that he's taken in asking you and others to consider amendments that are common in what we do on this floor. You just accepted in the last two days 49 amendments to the transportation bill. And you know, you stand there stating that you don't want any amendments, you don't want to even discuss the merits of any amendments that some of my constituents, and his, and even yours, might be willing to consider as they vote on this important resolution this next November. So I'm at a loss in that regard. I will vote with you to suspend, but I'm disappointed that you would take that position because, obviously, automatically, as we've seen here earlier today and yesterday and the days before, when an author of a piece of legislation takes a "No" position, most of the time he wins out. And we, as a minority, a number of those that might support a certain amendment don't get to get it

on. Well I still haven't made up my mind what I'll do next November, because, as you know, and as I stated in Committee, I support the union, the marriage, in our great state, between a man and a woman. I voted for that bill. And, I took, it really wasn't difficult for me to take that position. But after hearing the testimony the other evening, Senator Ellis has merit in what he talks about. Senator Hinojosa, Senator Van de Putte, Senator Whitmire, all of them make real good points about not ramming the, this down the throats of the people that we represent as it just came out of the House. The will of the people will be, ultimately, will be respected, but I'm wondering whether or not we're giving them enough to consider. So I'm just disappointed, Senator, that we're not going to be able to see, possibly, some good amendments go onto this resolution, knowing that we have the time to have this go across the hall and either have it concurred or not concurred, but considered, at least, by our colleagues in the House. I just hope, and I pray, and I do a lot of that nowadays, and I have during the period of my lifetime, quite frankly, but more lately. God helps us, that God really, truly helps us on the decisions we made on this, we make on this floor today because it will have impact one way or another on the people that all of us represent.

Presiding Officer: Senator, will you yield to the Senator from Lubbock for a question?

Senator Staples: I yield for a question.

Presiding Officer: Senator from Lubbock.

Senator Duncan: Senator Staples, I know we heard several hours of testimony from a lot of people on this, and I thought it was a good hearing, didn't you?

Senator Staples: I agree.

Senator Duncan: I thought we had you, one thing that happens when you're in one of these hearings that you, you hear from a whole different perspective of things. But I was torn by the fact that, and I think the people of Texas are ready for, to vote on and consider this, do you hear that back home?

Senator Staples: Yes I do. Very much so.

Senator Duncan: And as I understand, with regard to this amendment, it's very simple, it just lets the people make the decision.

Senator Staples: That is correct.

Senator Duncan: Do you believe that the people should have the right to make this decision for the State of Texas?

Senator Staples: I do.

Senator Duncan: Had you rather the people make this decision or the courts make this decision?

Senator Staples: And I think that's really what this question is about, is about letting the people's will be exercised without being overturned by the courts. And I respect Senator Lucio's position on the amendment issue, I wanted you to know, Senator, I didn't want to interrupt you earlier because I thought you had a very important statement to say. And I respect this process. The language that we have here, and as you as the Chair of the Committee, as you've done on all of my bills, you've told me

to go through and scrub them, we've done so. Sometimes we've come back with amendments that said, you were right, Mr. Chairman, this needs to be addressed. We went back and scrubbed this particular language and came to the conclusion that it is the best language that we could have in this process.

Senator Duncan: I think that, have you asked for legal opinions with regard to what, how this interfaces with the recent Nebraska opinion?

Senator Staples: Yes, I have.

Senator Duncan: In fact, there really isn't any case, it's a little difficult because the case law is the, the U.S. Supreme Court has not really ruled directly, squarely, on point with this issue, is that correct?

Senator Staples: That is, that is my understanding.

Senator Duncan: And as I understand this amendment, it's really kind of a one-pager, it has one or two lines in it. And the, this is a big issue that face, that this nation is discussing right now, correct?

Senator Staples: It is. This, this is an issue that, and we need to be clear about what it is. We make decisions as Legislatures all over the country, all of the time. And it is an emotional issue to many. It is a social issue. But I think what we're trying to say is, we want to remove this from the challenges so that the will of the people will not be overturned. We want to protect marriage by elevating that above other relationships. And that, there is a distinction there, I think there's a very clear distinction, and we shouldn't mistake rational restriction for unconstitutional discrimination as we go through this process. And I respect the Members on this floor. I respect the ones who are dealing with this issue. And I think every Member brings valid points and valid issues, and I'm, and I appreciate their involvement and their participation.

Senator Duncan: I'm glad you said that, and I noticed when we heard the testimony, and there were several hundred, I, there were several hundred people in the Chamber on that day. But I was impressed by the respect that each one of the persons who were for or against this amendment paid to this body in their testimony, and to the author of this amendment. I was, when I entered into this debate, listening to the bill, trying to make up my mind of whether to support it or not, or to the resolution, I, what I did not want to do, and I wanted to separate, is whether or not this is a antigay, or a, where it leaves a perception of, that there's some persecution involved with this. Now some people may perceive just any sort of classification like this being that. But I think it's something that ought to be discussed on this floor. Is that, I came away feeling from that hearing that there was mutual respect between those who were testifying, at least from those who are opposed to this, I was very impressed by the caliber of the testimony and the respect that was given, and I think I had a better understanding through that hearing of the issues involved in this. So what about you?

Senator Staples: I really did. I, we had a large crowd, and it was a lengthy hearing. We had Members who had multiple responsibilities, as did you and myself that evening. And they saw us go in and out, and they came and they articulated their views very passionately and emotionally, and I was, I thought it said a lot about who we are as Texans, about who we are as individuals who have differing perspectives

and different beliefs, that we could come together in a civilized manner, discuss those issues, lay out on the table many of the amendments that have been talked about today, I think were brought forward. I would venture to say that there's probably not a new position on this bill that we haven't heard on the House side, that we didn't hear on the Senate side through the Committee process, or that we haven't heard here today. And yet, they can, we all conducted ourselves at, for, in a very professional manner. And Senator Van de Putte had indicated some E-mail and correspondence that she had received, and some might characterize some of the positions on both sides as extreme. And I think you see a spectrum of viewpoints on various issues. But for the main and most part, people have adopted their positions based on their perspectives and beliefs. And, and for the most part, I mean, no group is void of people who act inappropriately, wouldn't I, I think.

Senator Duncan: Well I think that's correct. And I would be very disappointed if any proponent of this bill came out with strong offensive criticisms of persons who are gay. I would be offended by that. And I think—

Senator Staples: I would be, as well.

Senator Duncan: And I think, I know you are.

Senator Staples: Yes.

Senator Duncan: And would be. And I know that our Committee who heard this, and I think every Member on this body, would be offended by that sort of, that sort of rhetoric, because that's not right, would it be? One of the other things that impressed me about this was the interest of this body in hearing this testimony. Now we heard this bill on probably the busiest night of the legislative session with regard to committees. And we had Members that were going in and out and listening. We heard, I guess, we were here, probably six or seven hours of testimony. And I talked to, we had Members who were not even on the Committee that were here to listen to this testimony and debate. And even, I think, Senator Estes asked questions, he was involved in that. I think that, I was impressed by the fact that I talked to many of the Members who actually were watching this on TV, who were not, who may not have been in the Capitol but were in their apartment, and they were watching this on TV. So I think that this is a decision that this body has really deliberated on, we've got it late in the session, but I will, I do think that it's something that the Members have, have dug down deep and think that whatever their vote is, whether they're opposed to it or against to it, that it's the right vote. And those who support it, I would imagine, are supporting it for the purpose of allowing this important issue in our homes, in our hometowns, and in our districts, to allow the voice of the people to speak on this important issue. And, so I hope we get to take a vote here in a few minutes on that. (Laughter)

Presiding Officer: Senator Williams, for what purpose?

Senator Williams: To ask the author some questions.

Presiding Officer: Do you yield?

Senator Staples: I yield for questions.

Presiding Officer: Senator yields.

Senator Williams: Senator Staples, I wanted to follow up. Senator Duncan mentioned a moment ago that we had six or seven hours of testimony, and I got to listen to a good part of that. I found being Vice-chair of State Affairs, you get to hear a lot of testimony sometimes. But it was very, very enlightening to me. And I think it's important for the people who are, are for the Members here on the floor, and for the folks in the gallery to know that we, there have been some outside forces that tried to bring the wrong angle to this debate, to, to make it a divisive issue and to make it something that was impolite. But I was also taken in the testimony that we had in State Affairs with how polite the people on both sides of this issue were, and how much they wanted to have their views heard. And, just for the record, I think it's important that we note that a lot of the harsh correspondence that I received on this issue came not from within the state but from outside the state, people that aren't Texans, and people that don't really have a say in what happens here. I came back one morning right before we took this up in State Affairs and found that my fax machine was jammed with letters from people in San Francisco, for instance, which it's interesting to hear from them, but they don't really have a voice on this floor, would you agree?

Senator Staples: Well, I, this is, attracted attention from all over the United States. I think each Senator has gotten correspondence from nondistrict areas, and, it's always interesting how we, how you manage that flow of process. Last session we had over 5,000 E-mails on an issue in one weekend when we got back.

Senator Williams: Wow.

Senator Staples: And my, so we had to put an automatic response in the E-mail that said, thank you for contacting us, cannot respond directly, and gave instructions on how to respond. So it makes it difficult to manage, especially when there's an issue that is important to quite a few people.

Senator Williams: Well one of the things that you mentioned in your opening remarks that I don't think has really been fully developed in this debate that we're having is the issue of how marriage is a bedrock for civilization. And we had testimony in Committee about how all of the world's major religions recognize marriage between one man and one woman as the bedrock and the foundation of those faiths, all three of the major religions. And, in fact, if you look back over the course of history, it's really been a part of every great civilization. Could you share with us some of the testimony that, that you took away from that, I think it's important that that be developed as a part of our debate here today.

Senator Staples: I think that is a very important distinction. And I think it says that that specific distinction has been made. We didn't just develop it of recent. And all across this globe, and in all societies, that has been the distinction that has been made. And I, the part that saddens me is that it is turned to say that we're eliminating certain types of associations or relationships, because that is not what's being done here.

Senator Williams: Well marriage is a special status that the state confers upon families.

Senator Staples: That's exactly right.

Senator Williams: And that's what you're trying to protect with this—

Senator Staples: That's exactly right.

Senator Williams: Amendment.

Senator Staples: Without question, that's what's occurring here with this, and—

Senator Williams: Well I appreciate you bringing this amendment to us.

Senator Staples: Thank you.

(President in Chair)

Senator Shapleigh: Mr. President.

President: Senator Shapleigh, for what purpose do you rise?

Senator Shapleigh: Can we call the question? Move to call a question.

President: If you want to do that, you are recognized, but I think Senator Staples is going to move to suspend.

Senator Shapleigh: That's fine.

President: The Chair recognizes Senator Staples.

Senator Staples: Do I need to restate my—

President: Yes.

Senator Staples: Entire motion? I had moved to—

President: Senator Staples moved to suspend the Senatorial re—

Senator Staples: I move to suspend the Senate's regular order of business, I move to suspend the Senate's printing rule, Rule 7.12, and the Senate Rule requiring that joint resolutions are subject to Senate Rules governing bills, Rule 10.01.

President: Members, you've heard the motion by Senator Staples, the Secretary will call the roll. (Gavel) Members, there being 21 Ayes, 8 Nays, 1 Absence, there being 21 Ayes, 8 Nays, 1 Absence, 1 Excused Absence, the rule is, is suspended. (Gavel) Chair lays out the following resolution, the Secretary will read the resolution.

Secretary of the Senate: House Joint Resolution 6, proposing a constitutional amendment providing that marriage in this state consists only of the union of one man and one woman.

President: Senator Ellis, we're about to lay out amendments, did you wish to be recognized?

Senator Ellis: Yeah. I just want to ask the author a couple of questions before we go to the amendments.

President: Will Senator Staples yield to Senator Ellis?

Senator Staples: I yield to Senator Ellis again.

Senator Ellis: Thank you Senator. Senator, during our discussion earlier you said that we did not need to discuss the amendments that we're about to go through because this bill has been, I think your quote was, has been scrubbed in terms of review for legal problems. And I want to ask, who did the scrubbing?

Senator Staples: I, I talked to the Solicitor General in the Attorney General's office on two issues that came up. There's been no opinions issued by the Attorney General. But I did speak to the Solicitor General in the Attorney General's office on two issues that came up in Committee.

Senator Ellis: I just want, want Members—

Senator Staples: Sure.

Senator Ellis: To make sure—

Senator Staples: And—

Senator Ellis: To, to set the stage before we do the amendments.

Senator Staples: Sure.

Senator Ellis: We are about to amend the Texas Constitution, but you did, you do not have a written opinion, you had a discussion, how long did it last? Was it over—

Senator Staples: My staff—

Senator Ellis: Coffee, or—

Senator Staples: My staff researched the issues—

Senator Ellis: So it's just staff talk—

Senator Staples: Talk—

Senator Ellis: To—

Senator Staples: Talk to the Solicitor General. Did the background work, like we do on a lot of issues. Then I personally spoke to him as well, confirmed the findings. And—

Senator Ellis: To the Solicitor or the Attorney General?

Senator Staples: Solicitor General.

Senator Ellis: Can you tell me which family law experts testified before the State Affairs Committee on the impact of this important resolution?

Senator Staples: I can't, I, I did not keep a witness list. I was not there the entire time.

Senator Ellis: None? Would, would you—

Senator Staples: I—

Senator Ellis: There was no, there was no family law expert to testify before the—

Senator Staples: I would—

Senator Ellis: Committee on that?

Senator Staples: Disagree with that.

Senator Ellis: OK. But you can't remember the name of one?

Senator Staples: I know one family law expert that I saw there, Kelly Shackelford, who is an attorney.

Senator Ellis: OK. Did, did he testify?

Senator Staples: Yes, he did.

Senator Ellis: You remember what he testified?

Senator Staples: No. Like I said to you, I do not, but I am presenting to this body that I have every confidence that this does meet the test, and spoke with Representative Chisum, as you know, who is the House author of **HJR 6**, who spent, obviously, more time than I, as the original author of the legislation, on the background and the work that he had done, and the attorneys that have scrubbed the language and felt very confident of it.

Senator Ellis: Can you tell me which contract law expert testified before the State Affairs Committee on the impact of this legislation upon health care or estate planning arrangements of, in the State of Texas—

Senator Staples: I don't have any lists with me right now. I may try to find some in the course of this information.

Senator Ellis: That testified before the State Affairs Committee in the Senate?

Senator Staples: As, again, I went through the State Affairs Committee, I think it has no bearing, but I'll try to find some information for you.

Senator Ellis: OK. Just, just a couple more.

Senator Staples: Sure.

Senator Ellis: Can you tell me which employee benefits law experts testified before the Committee on the impact of this resolution on private corporations who offer health care benefits to domestic partners?

Senator Staples: I did not ask any to come and testify on my behalf, I don't know if the others did or not.

Senator Ellis: Are you aware that the Chair of the House State Affairs Committee promised that Members would have a chance to question the Attorney General before voting on the bill, and then turned around and passed the bill out of Committee before such testimony was heard?

Senator Staples: I'm not privy to that information and what was said and what was not said and in what context it was said.

Senator Ellis: But it's, it's fair to say, obviously, we know the Attorney General of Texas did not testify before the Committee on the Senate side.

Senator Staples: I did not see him at the time that I was there. I think I would've known.

Senator Ellis: And I just—

Senator Staples: I do know we had other elected officials that did.

Senator Ellis: I think, Senator, reasonable minds can disagree, I just want to make sure, Members, before they vote on these amendments to the Texas Constitution, a document that we should all revere, just as we revere the federal Constitution. I revere

it, even when it left me out of it. I still revere it and am glad I got in down the road. But before we vote I just want Members to realize that, you know, we're moving very quickly and with very few facts. Thank you Mr. President.

President: Thank you Senator Ellis. The following floor amendment, Floor Amendment Number 1 by Senator Shapleigh, the Secretary will read the amendment.

Secretary of the Senate: Floor Amendment Number 1 by Shapleigh, amend HJR Number 6 as follows.

President: The Chair recognizes Senator Shapleigh to explain Floor Amendment 1.

Senator Shapleigh: Thank you Mr. President. Members, according to the 2000 Census, there are 43,000 same-sex couples living in this great state. Because these couples are unable to marry, they are not recognized as next of kin, and are often barred from visiting or making decisions regarding their partner in the hospital. The Joint Commission on Accreditation of Healthcare evaluates and accredits hospitals nationally. They define family as the persons who play a significant role in the patient's life. This may include a person not legally related to the individual. This amendment makes sure that loving and committed same-sex couples could take on that responsibility and obligation in a hospital for their partner. That's what it would do.

President: The Chair recognizes Senator Staples on Floor Amendment 1.

Senator Staples: Thank you Mr. President. Senator Shapleigh, I would say that the language is clear on what this amendment does. It does not restrain private parties from entering into contractual relationships. The language in the amendment addresses that. We know that even marital status in the Terri Schiavo case does not clear up every issue conceivable. Unfortunately, there are issues there that occur. And, so the amendment would not be acceptable.

President: The Chair recognizes Senator Shapleigh to close.

Senator Shapleigh: Senator Staples, you are affecting 43,000 couples in the State of Texas with your legislation. And if a person walks into a hospital and has a partner in there making life-saving decisions, they cannot, under the language in your bill, stand in that hospital and make those decisions and be recognized as having that relationship with that person. If they are, have a marriage—

Senator Staples: Senator Shapleigh—

Senator Shapleigh: From another state, Senator, let me get my point across, because you're affecting people's lives with your legislation. What is wrong with recognizing, when you walk into a hospital, that this person who's been recognized as a legal partner in civil union in another state can make those decisions for that person? Why would you say—

Senator Staples: This—

Senator Shapleigh: We're going to ban that with your, the second part of your Constitutional amendment?

Senator Staples: Have you read the HJR, Senator?

Senator Shapleigh: Yes, Sir, I've read it several times.

Senator Staples: Show me in the language where that denies—

Senator Shapleigh: The second—

Senator Staples: Show me in the language—

Senator Shapleigh: The second from—

Senator Staples: Where it, let me finish, let me finish my thought. Show me in the language where it changes current law today.

Senator Shapleigh: Senator, well you're changing current law today because you're adding it to the Constitution. That's, that's one thing.

Senator Staples: No, that doesn't change—

Senator Shapleigh: The second thing, Senator—

Senator Staples: Our law, that puts it in the Constitution.

Senator Shapleigh: Is when you say, when you say, this state or political subdivision of this state may not create or recognize any legal status similar to marriage. So if a person from another state, Vermont, Massachusetts, another country, is in a hospital making those decisions, what you're saying is, we're not going to recognize that relationship. You, for the purposes of this hospital and this decision, are not married, and thus you cannot make that decision. That's what you've done.

Senator Staples: Senator Shapleigh, that language is in the Family Code today. We're not changing that by this Constitutional amendment.

Senator Shapleigh: Well if you're not changing it, then why not let it happen?

Senator Staples: I think we've been there and back several times on that issue, Senator. Mr. President, let me table—

Senator Shapleigh: Senator, let me close, and let me close by saying this. This is a pretty serious piece of legislation. And when you have folks who are making life and death decisions in hospitals, and by an interpretation that at least one witness gave, you're going to end up affecting that decision, then why not put this in the Constitution, too? I'd move, Members, that we adopt Floor Amendment Number 1.

President: Senator Shapleigh moves the adoption of Floor Amendment Number 1, the author opposes.

Senator Staples: I move to table.

President: Senator Staples moves to table Floor Amendment Number 1, Chair recognizes Senator Shapleigh on the motion to table.

Senator Shapleigh: I oppose the motion to table and hope that we can get some of the same protections into the Constitution for these individuals that we provide to other Texans.

President: Members, you've heard the motion. The Secretary will call the roll. (Gavel) With there being 20 Ayes, 9 Nays, 1 Absence, 1 Excused Absence, the motion to table prevails. The following floor amendment, Floor Amendment Number 2 by Senator Shapleigh, the Secretary will read the amendment.

Secretary of the Senate: Floor Amendment Number 2 by Shapleigh, amend HJR Number 6 as follows.

President: The Chair recognizes Senator Shapleigh to explain Floor Amendment 2.

Senator Shapleigh: Thank you Mr. President. Members, there was in this session a very destructive piece of legislation put on the CPS bill on the House side. And it raised concerns all across Texas about the ability of same-sex couples to adopt, to provide foster care for children in this state. What this amendment would do is to permit and recognize that this section cannot be construed to prohibit the recognition of an adoption or child custody order issued in this state or any other jurisdiction.

President: The Chair recognizes Senator Staples on Floor Amendment 2.

Senator Staples: Thank you Mr. President. I want to clarify. I think the issue in CPS is fostering, not adopting. I think there's a distinction there in exactly, and maybe the Chair could, if that's not an issue. Members, just like in the last amendment, this doesn't, this amendment that I have for the Constitution doesn't touch this situation. The previous amendment, the hospital visitation issue was used, but yet, we clearly state in that amendment that the state recognizes persons may address, arrange visitation rights in the hospitals. And, so I would be opposed to the amendment and at the proper time would move to table, Mr. President.

President: The Chair recognizes Senator Shapleigh to close.

Senator Shapleigh: Thank you Mr. President. Members, we're affecting people's lives. If you believe that we ought to protect the right of same-sex couples to adopt, have foster children, and recognize that legal relationship, then vote for this amendment. If you believe we should deny that in addition, in addition to the other rights that we're denying and banning in this state under this amendment, then vote with Senator Staples. I think when we recognized and saw this issue come over from the House side and saw an amendment go on a bill that would take children out of homes, that would affect lives into the future, many of us on this floor look at that amendment in horror, Senator Nelson. And my fear is that if we don't specifically enter into the Texas Constitution this right and make sure that we recognize it, we will effect it in families across the State of Texas. I would ask and move that we adopt Floor Amendment 2.

President: The Chair recognizes Senator Staples.

Senator Staples: Thank you Mr. President. I respectfully move to table.

President: Senator Staples moves to table Floor Amendment Number 2. The author of the amendment opposes, the Secretary will call the roll. There being 21 Ayes, 8 Nays, 1 Absence, 1 Excused Absence, the motion to table prevails. (Gavel) The following floor amendment, Floor Amendment Number 3 by Senator Ellis, the Secretary will read the amendment.

Secretary of the Senate: Floor Amendment Number 3 by Ellis, amend **HJR 6** by striking line 7 through 32.

President: The Chair recognizes Senator Ellis on Floor Amendment 3.

Senator Ellis: Thank you Mr. President. Members, currently, there are a number of contractual arrangements that gay and lesbian Texans, as well as heterosexual unmarried couples, enter into to protect themselves. These contracts could be affected by Senator Staples' amendment: living wills, power of attorney, common-law marriages, domestic partner benefits by public and private employers, and this is just to avoid that problem. I move adoption.

President: Thank you Senator Ellis. The Chair recognizes Senator Staples on Floor Amendment 3.

Senator Staples: Thank you Mr. President. Members, the language in **HJR 6** adequately addresses the issues that Senator Ellis is concerned about. And, a matter of fact, if it was an issue we'd be having problems with the current state law. Really, this, matter of fact, would gut **HJR 6**, providing no protection for a marriage. Stripping the second sentence is simply a vote against marriage and vote to kill the Constitutional amendment, and I would move to table.

President: Senator Staples moves to table Floor Amendment Number 3, the Chair recognizes Senator Ellis on the motion to table.

Senator Ellis: Vote against it.

President: Members, you've heard the motion by both gentlemen. The Secretary will call the roll. (Gavel) There being 21 Ayes, 8 Nays, 1 Absence, 1 Excused Absence, the motion to table prevails. The following floor amendment, Floor Amendment Number 4, by Senator Ellis, the Secretary will read the amendment.

Secretary of the Senate: Floor Amendment Number 4 by Ellis, amend **HJR 6** by striking lines 14 through 16.

President: The Chair recognizes Senator Ellis to explain Floor Amendment 4.

Senator Ellis: Thank you Mr. President. Members, this language is very straightforward, if you just look at it. I think I heard a statistic earlier by Senator Shapleigh that gave note, made note of the number of common-law marriages that there are in Texas. I'm not sure if the number's accurate, 100 percent accurate or not. But I'm told that Texas has the largest number of common-law marriages in the country. Hope that's not true, and I know that none of you would condone common-law marriages. A young person from my staff referred to it as shacking up. And I'm sure none of you've ever participated in it. But in the event that someone had a reasonably large estate, there's the possibility that this language in Senator Staples' Constitutional amendment could end up in court. By him putting this in our Constitution, he's running the risk of these issues going to federal court, by the way, as opposed to just state court. But this clears up any ambiguity. You heard him state earlier that there were no, there was no testimony before the Committee, on the Senate side, of the Attorney General. I would just encourage Members to think about this; this does not get into the other issue. I'm just trying to make sure that in his attempt to

ban gay marriages that he is not going to stop men and women who are engaged in common-law relationships from doing that. We ought to discourage that in other ways and not write it into the Constitution.

President: The Chair recognizes Senator Staples on Floor Amendment 4.

Senator Staples: Thank you Mr. President. Thank you Senator Ellis. I, I want to make sure that, I mean this issue was brought up in Committee and as a result of that I did discuss the issue with the Solicitor General, and it is the opinion of the Attorney General's office that this amendment does not interfere with common-law marriage. Common-law marriage is not a status identical or similar to marriage; it is marriage. As it is currently applied in Texas, the marriage mechanism already meets the definition set forth by the amendment, one man and one woman. But for a matter of legislative intent, Senator Ellis, I want to say, as a matter of legislative intent, that my intent is that this amendment has no impact on common-law marriage. And I would move to table.

President: Senator Staples moves to table Floor Amendment 4. The Chair recognizes Senator Ellis on the motion to table.

Senator Ellis: Mr. President, I would encourage Members to vote against the motion to table and say to you, something as significant as this, with the large number of common-law marriages that there are in Texas, you ought to not put those people in a position which they're going to end up having to go through the judicial system and fight it out on that issue. So I would ask Members to vote against the motion to table.

President: Thank you Senator Ellis. Members, you've heard the motion to table by Senator Staples and the objection from the author of the amendment. The Secretary will call the roll. Members, there being 21 Ayes, 8 Nays, and 2 Excused Absences, the motion to table prevails. (Gavel) The following Floor Amendment Number 5, by Senator Ellis, the Secretary will call, will read the amendment.

Secretary of the Senate: Floor Amendment Number 5 by Ellis, amend **HJR 6** by inserting at the end of subsection (b) the following.

President: The Chair recognizes Senator Ellis to explain Floor Amendment 5.

Senator Ellis: Thank you Mr. President. Members, I will pull this amendment down. I can't take much more of this rejection. I might lose my calm, mild-mannered demeanor, and that other Rodney might come out. So I'll pull this one down.

President: We, you got the bicycle on last night. Senator Ellis pulls down Floor Amendment 5.

Senator Ellis: Thank you Mr. President. I got the bicycle on after I had to threaten to kill the Senator's fine bill, because if I'd known this was coming up, I would have talked about that one until midnight.

President: The following floor amendment, Floor Amendment Number 6, by Senator Lucio and Senator Madla, the Secretary will read the amendment.

Secretary of the Senate: Floor Amendment Number 6, by Lucio and Madla.

President: The Chair recognizes Senator Lucio to explain Floor Amendment 6.

Senator Lucio: Thank you Mr. President. Members, this is a simple amendment that would clarify some confusing language that was added on the House floor and restores the bill closer to the version that was passed with the House State Affairs Committee. What this amendment does is include health benefits to the list of items included in Section 2. If the state believes that allowing the list of benefits that can be permitted without being construed as having legal status of married, then health benefits ought to be included.

President: The Chair recognizes Senator Staples on Floor Amendment 6.

Senator Staples: Thank you Mr. President and Senator Lucio and Senator Madla. I appreciate the concern, and I think it's a valid one and one that should be addressed. This is the same language that we passed last session in DOMA that we have. And, so there have been, no court cases have ever questioned whether this restricts private parties from health care insurance. And, so as a valid concern, we have that language that has addressed it, and as a result I would respectfully move to table.

President: Senator Staples moves to table Floor Amendment 6. Chair recognizes Senator Lucio—

Senator Lucio: Thank you—

President: On the motion.

Senator Lucio: Mr. President. Members, Texas has the highest rate of uninsured folks in the nation, with such a huge problem, and it makes absolutely no sense to tell companies or city governments who wish to provide health insurance benefits for the domestic partners of their workers that they can't. Why should we add to the rolls of the uninsured and to the, potentially raise the cost of our counties and state, when we could fix this right here and now? So I'll ask you to vote "No" on the motion to table.

President: Members, you've heard the motion to table by Senator Staples, opposed by the author, Senator Lucio. The Secretary will call the roll. (Gavel) There being 17 Ayes, 12 Nays, and 2 Excused Absences, the motion to table prevails. (Gavel) The following floor amendment, Floor Amendment Number 7 by Senator Hinojosa, the Secretary will read the amendment.

Secretary of the Senate: Floor Amendment Number 7 by Hinojosa, amend HJR Number 6, Senate committee printing, as follows. This was passed out earlier; it should be on your desk.

President: The Chair recognizes Senator Hinojosa to explain Floor Amendment 7.

Senator Hinojosa: Thank you Mr. President. Members, this is the three strikes and you're out amendment. You know, unfortunately, here in the State of Texas, we have a large number of divorced families, and we make it very easy for families to get divorced. So what this amendment does, if we're really trying to protect marriage as an institution, you can only be married and divorced three times, Senator Staples.

President: The Chair recognizes Senator Staples on Floor Amendment 7.

Senator Staples: Senator, thank you for recognizing the importance of marriage and its, and the dissolution and its impact on society. I think if, you raise a valid point and that's the reason we have a lot of troubles today. And I think we're not trying to, we're just trying to make things better with this amendment. Your amendment, I don't think fits here, and therefore I respectfully move to table.

Senator Hinojosa: I got a friendly amendment from Senator Nelson.

President: Senator Staples temporarily withdraws his motion to table so the Chair can recognize Senator Nelson.

Senator Nelson: Well I did have a—

President: Will the—

Senator Nelson: I did have a question of the author—

President: Will Senator—

Senator Nelson: Of the amendment.

President: Hinojosa yield to Senator Nelson?

Senator Hinojosa: I yield, Mr. President.

Senator Nelson: Senator Hinojosa, I, this one attracts me. I like this idea. And—

Senator Hinojosa: Thank you.

Senator Nelson: I could almost be with you, if the three wasn't in there, or two, you know—

Senator Hinojosa: I'm willing to accept it.

Senator Nelson: But I like where you're going with this. And I think, truly, seriously, we all need to be talking more about preserving the sanctity of marriages, period. Thank you.

Senator Hinojosa: In many states, Senator Nelson, you cannot get divorced unless you've been separated for at least a minimum of one year, to make sure that that's the way you want to go. And here we make it so easy, they divorce overnight. And what I'm trying to—

Senator Nelson: You know what, Senator—

Senator Hinojosa: Do is find a way—

Senator Nelson: I would like to work on you to resolve that, because I've got a bill I'd love to pass out of this body next session.

Senator Hinojosa: Thank you Senator.

President: The Chair recognizes Senator Nelson on Floor Amendment 7.

Senator Hinojosa: No.

President: No, you withdrew your motion. So right now, we have a motion to adopt Floor Amendment 7, unless there's another motion from you.

Senator Staples: I move to table.

President: Senator Staples moves to table Floor Amendment 7. The Chair recognizes Senator Hinojosa on Floor Amendment 7, on the motion to table.

Senator Hinojosa: Mr. President, I'm going to withdraw my amendment.

President: Senator Hinojosa withdraws Floor Amendment Number 7.

Senator Hinojosa: Mr. President, I have another amendment dealing with messing around, it's called the messing around amendment, but I'll also withdraw that one.

President: Well (inaudible) appreciates that.

Senator Hinojosa: Thank you Mr. President.

President: The following floor amendment, Floor Amendment Number 8 by Senator Van de Putte, the Secretary will read the amendment.

Secretary of the Senate: Floor Amendment Number 8 by Van de Putte, amend HJR Number 6 as follows in Section 1.

President: The Chair recognizes Senator Van de Putte on Floor Amendment 8.

Senator Van de Putte: Thank you Mr. President. Thank you Members. Senator Staples, I almost hate to offer this amendment, but I made a promise to a constituent. You see, that constituent asked me during the regular, the interim, and when we were first, in the first couple of months of this session, if we were going to bring up this amendment. And, I told that constituent, I didn't think so. I didn't think, I said, well, the House might bring it up, but I thought maybe that there wouldn't be the demand in the Senate. Because, I told her, you know, we, I told my constituent, we've got school finance and we've got to take care of Child Protective Services and we've got a budget to do and we're very concerned about water policy and transportation. So I told my constituent that I didn't think that we would ever get to this amendment that would ban gay marriages in our Constitution. So my constituent asked me, they said, well, if that amendment ever gets up, I think what you ought to do, and she and her husband were very tired and upset about all this talk about same-sex marriage, same-sex marriage, same-sex marriage, you see, because they have a son who's gay, and they love him very much, and they love his partner very much. And, so she said, I am just so tired of all those people who want to strengthen my marriage. If they really want to strengthen marriage, they should require that all marriages have some sex. Forget the same sex, let's have marriages that have some sex. So I'm complying with the promise that I made to a constituent that said I wouldn't talk about same-sex marriage amendment unless the same-sex marriage amendment came out. And, so what this amendment does, says we agree that marriage in this state ought to be between a man and a woman, but if you really want to strengthen marriage, then let's put in the Constitution that all marriages at least have to have some sex. And I don't know, Mr. President, if I should even make my colleagues vote on this. But I am trying to comply with the promise that I made to a constituent who didn't want me to vote on the same-sex marriage amendment, but she wanted me to propose some sex in marriages.

President: You know, (laughter), you know, Senator Van de Putte, normally the Presiding Officer, the tradition is not to comment. This is your debate. But I must tell you, I thought you were kidding until I just looked at your amendment.

Senator Van de Putte: Mr. President, I made a promise to a constituent, because I didn't think this amendment was ever going to get up, and this is, I mean, the same-sex marriage amendment. She asked me, she says, just amend it, strengthen the marriage, put some sex in every marriage, that ought to strengthen things.

President: Well I would almost be tempted to read your amendment, except we're on world wide Internet, and there's some minors in the gallery, so I won't read it, but—

Senator Van de Putte: But, Senator Staples, I appreciate the seriousness of this. I just put this forward to comply and to keep a promise to my constituent. And, so, and I do not want to, in the least way, embarrass any Member of this body who would have to go home and answer to their constituents and say, now why didn't you vote for some sex in a marriage? So, Mr. President, I withdraw this amendment.

President: Senator Van de Putte pulls down Floor Amendment 8. The Chair recognizes Senator Staples for a motion.

Senator Staples: Thank you Mr. President. Thank you Senators. I would move adoption of **HJR 6**.

President: Members, you have heard the motion by Senator Staples for the adoption, who moves the adoption of Floor, of **HJR 6**. The Secretary will call the roll. (Gavel) There being 21 Ayes, 8 Nays, 2 Excused Absences, **HJR 6** is adopted. (Gavel)

